

In the Matter of Merchant Mariner's Document No. z-707737 and all Other Seaman Documents
Issued to: RUSSELL W. SCHUMACHER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1273

RUSSELL W. SCHUMACHER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 12 May 1961, an Examiner of the United States Coast Guard at Portland, Oregon revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a wiper on board the United States SS OCEAN ALICE under authority of the document above described, on 3 March 1961, Appellant Wrongfully had marijuana in his possession.

At the hearing, Appellant was represented by counsel. A plea of not guilty to the charge and specifications was entered by counsel.

The Investigating Officer introduced evidence to show that during the Master's search of the ship for marijuana while at sea, Appellant surrendered a bottle containing marijuana.

The evidence in defense and the brief on appeal raise two points. First, Appellant did not know what the substance was that was given to him (but not used) by a longshoreman in Ceylon to help Appellant's breathing which was impeded by a seriously injured nose. Secondly, this case was considered by a federal Grand Jury but Appellant was not indicted.

Appearance for Appellant: Kneland C. Tanner and William M. Langley of Portland, Oregon, of Counsel.

OPINION

I agree with the Examiner's statement that the failure of the Grand Jury to file an indictment does not preclude administrative proceedings against Appellant's document.

The critical issue in this case is whether Appellant knew the substance in his possession was marijuana. Commandant's Appeal Decisions Nos. 1165, 1178. A determination, as to the credibility of Appellant's denial that he knew it was marijuana, is the function of the Examiner who heard and observed Appellant when he testified at the hearing. His testimony reasonably raised the issue of lack of knowledge as to the nature of the substance. Hence, it must be considered.

The Examiner stated that there is substantial evidence to indicate the Appellant "knew, or should have known, that the substance was marijuana" and, therefore, the possession was wrongful. But a conclusion, that Appellant should have known, is not sufficient because genuine ignorance, even though it is due to neglect or carelessness, is a good defense. Since there are factors which are both favorable and unfavorable toward either accepting or rejecting Appellant's denial of knowledge, the finding that Appellant committed the offense alleged is set aside and the case will be remanded to the same Examiner for revision of his decision.

ORDER

The order of the Examiner dated at Portland, Oregon, on 12 May 1961, is VACATED. The record is REMANDED for further proceedings not inconsistent with this decision.

A. C. Richmond
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 24th day of November 1961.